

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDDIE D. ROBERTS and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Clewiston, FL

*Docket No. 02-272; Submitted on the Record;
Issued January 30, 2004*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant forfeited his right to compensation beginning June 4, 2001 because he was found guilty of violating 18 U.S.C. § 1001.

The Office accepted appellant's claim for cervical sprain, contusion, lower abdomen, left nerve entrapment, cervical concussion, multiple scalp laceration, compression fracture at L-1, mixed anxiety and depressive reaction.

The Office required appellant to complete periodic EN1032 form questionnaires regarding whether he had any earnings from employment or self-employment for the prior 15 months. On forms dated April 20 and November 2, 1992, November 3, 1994, November 7, 1995, November 6, 1996, November 3, 1997, December 21, 1998 and November 22, 1999, appellant indicated that he had not received any earnings from employment or self-employment.

In an investigative report dated June 30, 2000, the Office of the Inspector General found that in 1992 appellant paid fines and closed down Getty-up Gator, Inc., an alligator farm that he had been operating with two other people. The report stated that appellant had been actively developing and managing his real property as a commercial business venture in the form of a trailer park from 1977 through 1999. The report also stated that in 1998 and 1999, appellant provided maintenance services at the trailer park he operated and managed and in 1999 he was observed working in a used car lot.

In a plea agreement dated February 8, 2001, before the United States District Court of the Middle District of Florida, appellant entered a plea of guilty to the charge that he made a material false statement with respect to a matter within the jurisdiction of the U.S. Department of Labor, in violation of 18 U.S.C. §§ 1001 and 1002. The plea agreement stated that on November 3, 1997 on Form EN1032, appellant responded "no" to the question of whether he had been self-employed or involved in any business enterprise in the past 15 months, when in fact he had received a total of \$35,760.00 in rental payments from his tenants in the trailer park he owned

and managed in Glades County, Florida. The plea agreement noted that the amount of those rental payments exceeded his compensation benefits in 1996 and 1997.

In a judgment dated June 5, 2001, by the United States District Court in the Middle District of Florida, the court found appellant guilty of making a material false statement pursuant to 18 U.S.C. § 1001, on November 3, 1997. The effective date of the sentence was June 4, 2001.

By decision dated August 31, 2001, the Office terminated appellant's compensation benefits effective June 4, 2001, under 5 U.S.C. § 8148(a), on the grounds that he had committed fraud related to his receipt of compensation payments.

The Board finds that the Office properly determined that appellant forfeited his right to compensation because he was convicted of violating section 8148 but the termination date should be modified to June 5, 2001.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.¹ In this case, the Office relied on section 8148 of the Federal Employees' Compensation Act,² which provides that a conviction for fraud in the application for benefits shall result in forfeiture of future entitlement to benefits.³

Pursuant to section 8148(a) of the Act, a federal or state criminal conviction relating to fraud in the application for or receipt of any benefit under the Act shall result in forfeiture of compensation benefits. The Act states:

“Any individual convicted of a violation of section 1920 of [T]itle 18 or any other federal or state criminal statute relating to fraud in the application for [or] receipt of any benefit under [the Act], shall forfeit, (as of the date of such conviction), any entitlement to any benefits such individual would otherwise be entitled to under [the Act] for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129.”⁴ (Emphasis added.)

Office procedures provide that, before any action is taken to terminate or suspend compensation under section 8148, the file must contain a copy of the indictment, a copy of the plea agreement, if any, a copy of the document containing the guilty verdict and/or a copy of the court's docket sheet. Further, this evidence must establish that the individual was convicted and that the conviction is related to the claim for or receipt of, benefits.⁵ The termination is effective

¹ *William A. Kandel*, 43 ECAB 1011 (1992).

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8148(a).

⁴ Sections 8106 and 8129 pertain in part, to the recovery by the Office of an overpayment of compensation benefits. 5 U.S.C. §§ 8106(b), 8129.

⁵ See 20 C.F.R. § 10.17. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12 (March 1997).

on the date of the verdict or on the date the guilty plea is accepted by the court.⁶ Because of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.⁷

In this case, the judgment by the United States District Court of the Middle District of Florida, dated June 5, 2001 found appellant guilty of making a material false statement pursuant to 18 U.S.C. § 1001 on November 3, 1997. The plea agreement dated February 8, 2001 stated that the false statement consisted of appellant's denying in writing on Form EN1032 that he had been self-employed or had entered into any business enterprise in the past 15 months, when in fact he had earned significant income from his rental property. The Board has held that an employee's conviction of violating 18 U.S.C. § 1001 constitutes conviction of violating an "other federal" criminal statute relating to fraud in application for benefits under the Act and subjects him to the forfeiture provisions of section 8148 of the Act.⁸ Under section 8148(a), appellant's conviction of violating 18 U.S.C. § 1001 requires that his entitlement to all compensation benefits arising from his employment be forfeited effective the date of the conviction.⁹ Congress has enacted section 8148(a) as an absolute forfeiture of compensation, without any provision for any waiver of the effects of this section.

In its judgment dated June 5, 2001, the United States District Court stated that the effective date of appellant's sentence was June 4, 2001. The Office terminated appellant's compensation benefits on June 4, 2001 based on the District Court's statement that the sentence was effective on that date. The correct date for termination, however, should be June 5, 2001, the date of the judgment. The date of appellant's termination of compensation is therefore modified from June 4, 2001 to June 5, 2001.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12(e)(1) (March 1997); *Jorge E Sotomayor*, 52 ECAB 105 (2000).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12(f)(2) (March 1997).

⁸ *Jane A. Pastva*, 54 ECAB ___ (Docket No. 02-1141, issued December 11, 2002).

⁹ *Id.*

The decision of the Office of Workers' Compensation Programs dated August 31, 2001 is hereby affirmed as modified

Dated, Washington, DC
January 30, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member